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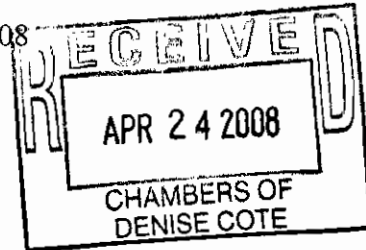
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MEMO ENDORSED

April 24, 2008



By Hand Delivery

Hon. Denise L. Cote
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Suite 1040
New York, New York 10007

Re: *Wilner, et al. v. National Security Agency, et al.*, 07-cv-3883-DLC

Dear Judge Cote:

This Office represents the Defendants in the above-referenced action, which concerns Plaintiffs' efforts to obtain documents and other information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552b, relating to the Terrorist Surveillance Program ("TSP"). The Government's motion for summary judgment, currently due April 28, will require nine declarations, including one from the Director of National Intelligence, dealing with ten FOIA exemptions and the motion puts at issue classified information of an extremely sensitive nature. Despite my best effort to comply with the current deadline, I write to request a short extension of time—one week—for the Government to file its motion. Please note that I do not request any continuance of the May 8 status conference. Plaintiffs consent to the requested extension.

Since receiving the Court's order granting, in part, the Government's request for a six week extension of time (to May 30) to file for summary judgment and setting April 28, 2008, as the date for that motion, I have been diligently working to comply with that order. Notwithstanding those efforts, including working nights and weekends, I have been unable to complete the Government's papers in advance of the April 28 filing date principally because of the complexity of the motion and the logistics and care needed with regard to a motion concerning this subject matter.

The Government's motion for summary judgment on the withholding of records under FOIA requires the preparation of eight declarations from eight components^{1/} (some from high

¹ Declarations are needed from the Office of Legal Counsel, the Civil Division, the Criminal Division, the Office of Intelligence and Policy Review, the Office of Solicitor General, the Office of Information Policy, the FBI, and the NSA. Several will be classified and require special handling.

level officials) as well as a separate declaration from the Director of National Intelligence, a cabinet-level official. Moreover, I expect the briefing itself will require treatment of ten FOIA exemptions—Exemptions 1, 2(low), 2(high), 3, 5, 6, 7(A), 7(C), 7(D), & 7(E)—and I believe it is likely that the Government's brief will exceed 75 pages (requiring a separate motion for leave to file in excess of the page limits). I also learned yesterday that one of the declarants has been out of the country for official business and will be for the remainder of this week.

Because this litigation concerns documents that are highly classified, special care must be taken in preparing the Government's papers in support of its motion. Four of the supporting declarations are expected to be classified and filed only for the Court's *in camera*, *ex parte* review, and unclassified versions must be prepared and special procedures must be employed to arrange for delivery to the Court. Finally, given the sensitivity of the information at issue, I am one of only a handful of attorneys cleared to work on this matter in the Department, which itself complicates the preparation of these materials and greatly limits the ability of the Government to add additional attorneys to meet the current deadline.

I regret not laying out with greater care in my last letter the complicated nature of the Government's summary judgment filing. I would also note that the Government has expended considerable efforts to provide Plaintiffs with substantial information, totaling hundreds of pages, concerning other FOIA litigation over TSP-related records in an effort to narrow the issues before the Court. It only became apparent to me in mid-April, when the parties most recently conferred after the Government provided draft indices and specific proposals to narrow the dispute over withholdings, that the likelihood of substantial further narrowing was remote. But these good faith efforts detracted from the time needed to prepare the Government's filings.

If the Court grants this short extension of one week, our motion for summary judgment would be due May 5, and would not upset the scheduled status conference on May 8. As the Court is aware, prior to the most recent request of Defendants, there were two unopposed modifications to the briefing schedule, one by Defendants and one by Plaintiffs.

Thank you for your consideration of this request. I apologize if I have caused the Court any inconvenience.

Respectfully,

Alexander K. Haas /slm

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cc: Counsel for Plaintiffs (by electronic delivery)

Granted. Government's motion is due May 5. To permit the parties an adequate opportunity to consult, the conference is adjourned to May 12 at 10⁰⁰am

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Spencer C. Cate
April 25, 2008